

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Board makes the following findings of fact and conclusions of law:

Claimant testified he injured his low back on March 14, 2002, while stacking concrete blocks from the drying table onto pallets. Claimant testified he mentioned to respondent's owner, Robert Bales, on the date of the accident, that he thought he injured his back loading concrete blocks.

Claimant returned to work the next day, March 15, 2002. Claimant testified he then told his supervisor, Don Bryan, that he had hurt his back at work the day before.

Claimant did not return to work on Monday, March 18, 2002, because of his back pain. Claimant sought treatment through a chiropractor for his continuing back pain. Claimant first saw the chiropractor on Tuesday, March 19, 2002. Claimant testified he telephoned Mr. Bryan on March 18, 2002, and notified him that he would not be at work because of his continuing back pain and he was going to a chiropractor for treatment. Further, claimant testified he contacted Mr. Bryan on March 19, 2002, after he had his first chiropractic treatment and told Mr. Bryan that he would be off work for the rest of the week.

After claimant received four chiropractic treatments, he returned to respondent's plant on Monday, March 25, 2002. At that time, claimant testified he notified Mr. Bryan that the chiropractic treatments had not helped his back pain very much and the chiropractor did not want him to return to work. But Mr. Bryan allowed claimant to return to work and take off work when he needed to see the chiropractor.

The chiropractor's treatment records were admitted into evidence at the preliminary hearing and showed claimant received three additional chiropractic treatments after March 25, 2002. Claimant testified that Mr. Bales was also present on March 25, 2002, when claimant had his conversation with Mr. Bryan about returning to work and continuing the chiropractic treatments.

After claimant returned to work on March 25, 2002, he testified that sometime during that week he also notified the office manager, Dusty Buttram, that he had injured his back at work.

Both claimant's supervisor, Don Bryan, and respondent's office manager, Dusty Buttram also testified before the ALJ at the preliminary hearing. The ALJ also admitted into the preliminary hearing record over claimant's objection, a signed statement dated May

30, 2002, from respondent's owner, Robert Bales.¹ Both Mr. Bryan and Ms. Buttram unequivocally testified claimant told them he injured his back over the weekend and not at work.

Ms. Buttram testified that the first week claimant returned to work she had a conversation with claimant concerning his back problems. In that conversation, claimant told her his back was still bothering him. Ms. Buttram then asked claimant if he had injured his back at work and claimant told her no, instead he had injured his back at home over the weekend. The first time Ms. Buttram had any knowledge that claimant was making a workers compensation claim for his low back symptoms was May 20, 2002, when respondent received a claim for compensation sent by claimant's attorney.

In Mr. Bales' May 30, 2002, statement, he also indicated claimant told him that he injured his back at home over the weekend instead of at work for the respondent.

Two of respondent's representatives testified before the ALJ and the third representative signed a statement disputing claimant's testimony that he notified all three of those representatives that he injured his back while working for respondent. Where there is conflicting testimony and also, as in this case, a conflicting statement, credibility is an important issue. Here, the ALJ had the opportunity to personally observe the claimant and two of respondent's representatives testify in person. Denying claimant's request for medical treatment and temporary total disability benefits, the ALJ apparently believed the respondent's representatives' testimonies along with the written statement of respondent's owner over claimant's testimony. The Board concludes that some deference may be given to the ALJ's findings and conclusions because he was able to personally observe and judge the credibility of the claimant and two of respondent's representatives. Therefore, the Board concludes, for preliminary hearing purposes, that claimant failed to give respondent timely notice of his alleged March 14, 2002, work-related accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Jon L. Frobish's June 28, 2002, preliminary hearing Order should be and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2002.

¹ See K.A.R. 51-3-5a(a). "Medical reports or any other records or statements shall be considered by the administrative law judge at the preliminary hearing."

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Matthew J. Thiesing, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation